



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 11, 1998

Captain Robert Taylor
Amarillo Police Department
200 S.E. 3rd Avenue
Amarillo, Texas 79101-1514

OR98-0677

Dear Captain Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113171.

The Amarillo Police Department (the "department") received an open records request for case number 97-114401 and case number 97-106177. You seek to withhold the documents pursuant to section 552.108 of the Government Code.

Section 552.108(a) of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if (1) release of the information would interfere with the detection, investigation, or prosecution of crime" Because you have informed this office that case number 97-114401 is awaiting Grand Jury action and case number 97-106177 is still under investigation and as such, the records at issue pertain to pending criminal prosecution, we conclude that you have met your burden of establishing that the release of the requested information at this time would interfere with law enforcement or prosecution. You therefore may withhold most of the requested information at this time pursuant to section 552.108(a)(1).

Please note, however, that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other exception to disclosure, the department

must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).

You seek to withhold an offense report, excluding the front page, and a sexual assault victim's written statement detailing the sexual assault pursuant to common-law privacy. Section 552.101 of the Government Code also protects information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85.

Information pertaining to an incident of sexual assault raises an issue of common-law privacy. Open Records Decision No. 339 (1982). In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy" and, therefore, any information tending to identify the assault victim should be withheld pursuant to common-law privacy. See also Open Records Decision No. 393 (1983).

We have marked a representative sample of the information that implicates the privacy interests of the rape victim. It is not clear to this office, however, whether this information has been revealed in open court or in public court records. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common-law privacy). See also *Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-75 (Tex. 1995). Consequently, the department must withhold the types of information we have marked only to the extent that the information has not otherwise become public.

Additionally, exception from required public disclosure under constitutional or common-law privacy includes: medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990), and information concerning the intimate relations between individuals and their family members. See Open Records Decision No. 470 (1987). After examining the submitted material, we believe that you must withhold any information indicating disabilities contained within the front page information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 113171

Enclosures: Submitted documents

cc: Ms. Patsy Barfield
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(w/o enclosures)